SUPREME COURT, U.S.

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MICHAEL RODAK, JR.

In The

Supreme Court of the United States

October Term, 1974

No. 74-1068

THE PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

LARRY GRAYSON,

Respondent.

On Petition For Writ Of Certiorari To
The Supreme Court Of Illinois

MEMORANDUM IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1065

THE PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

LARRY GRAYSON,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Illinois

MEMORANDUM IN OPPOSITION

Certiorari should be denied for the following reasons:

1. This case does not necessarily present a question arising under the constitution of the United States. The principle of collateral estoppel is as much a part of Illinois law as it is a part of the Fifth Amendment. In stating the principle of collateral estoppel, the Illinois Supreme Court quoted from *Ashe* v. *Swenson,* 397 U.S. 436, 443 but also cited the case of *People* v. *Haren,* 27 Ill.2d 229 (1963) (holding that the doctrine of collateral estoppel or "estoppel by verdict" applies in criminal cases).

2. When the court reached its ultimate conclusion—*i.e.* that difference between the burden of proof in probation revocation proceedings and criminal prosecutions ". . . cannot fairly serve to permit relitigation of the identical issue upon the same evidence"—the Court cited and relied upon *People* v. *Armstrong,* 56 Ill.2d 159 (1974) (holding that the principle of collateral estoppel applies to successive motions to suppress the same evidence, made before different judges by the same defendant.

3. Those cases were not decided on the basis of the Fifth Amendment, but were decided under Illinois law. In fact, *People* v. *Haran* was decided prior to the decision of this Court in *Benton* v. *Maryland,* 395 U.S. 784 (1969), holding that the Double Jeopardy Clause is applicable to the States. It is not true, therefore, as argued by petitioner, that ". . . the doctrine of collateral estoppel cannot be extended beyond the scope of the Fifth Amendment guarantee in the manner adopted by the Supreme Court of Illinois." (Petition, p. 9) The Illinois Supreme Court can extend the doctrine under State law beyond the scope of the Fifth Amendment guarantee. The States are free to develop higher standards of constitutional protections than those afforded under the Fourth, and presumably, the Fifth Amendments. (See *Cooper* v. *California,* 386 U.S. 52, 62 1967).)

4. Since the probation revocation proceedings in this case are entirely a creature of State law, the States should be free to determine under what circumstances prior proceedings will act as a bar to probation revocation. In this context it is helpful to observe that although in Illinois there is a difference in the standard of proof, the States are free to require proof beyond a reasonable doubt in

probation revocation proceedings. Any decision by this Court on this issue would accordingly be limited to States which have the same burden of proof in probation revocation proceedings.

5. Since there is an adequate and independent state ground for the Illinois Supreme Court's decision, this Court should avoid deciding the constitutional question raised by petitioner.

CONCLUSION

For the reasons urged herein, it is respectfully requested that the petition for certiorari to review the judgment of the Supreme Court of Illinois be denied.

Respectfully submitted,

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